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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,490	10/24/2003	Susan Niemiec	J&J 2047 DIV	3449

27777 7590 02/04/2005  
PHILIP S. JOHNSON  
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ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/692,490

**Applicant(s)**

NIEMIEC ET AL.

**Examiner**

Gollamudi S Kishore, Ph.D

**Art Unit**

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-23 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-23 and 34-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-18-04 &amp; 8-18-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

Claims included in the prosecution are 14-23 and 34-44.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 14, 16-17 and 19 are rejected under 35 U.S.C. 102(b) or (e) as being anticipated by Hayward (6,071,535).

Hayward discloses hair-conditioning formulations containing liposomes and encapsulated therein silicone polymers (Examples 9-11).

The 102 (b) rejection will be reconsidered upon the review of the parent application (this application is a CIP of 09/320,894) for support. An initial review found no support for 'conditioning polymers'.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward cited above.

The teachings of Hayward have been discussed above. what is lacking in

Hayward is the explicit teaching of the molecular weight of the silicone polymers.

Assuming that the molecular weights of the polymers are different in Hayward, in the absence of showing the criticality, it is deemed obvious to use silicones with suitable molecular weight to obtain the best possible results.

5. Claims 14-19, 23 and 34-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/23578 of record in combination with either Dodd (5,674,478) or Schueller (5,306,434).

WO 95 teaches liposomal compositions containing a hair conditioner. The

compositions further contain a detergent and cholesterol. According to WO, the deposition of the active agent on hair is higher using liposomes (abstract, page1 line 32 through page 3, line 22, page 5 line 5 through page 9 line 19, Examples, in particular 6-8 and claims). What is lacking in WO is the specific teaching as to what the conditioning agent is.

Dodd (5,674,478) while disclosing hair care compositions teaches that silicones and PVP are hair conditioners (abstract, col. 7, line 8 through col. 10, line 23).

Similarly, Schueller teaches silicones and PVP as hair conditioners (abstract and columns 2-4).

The use of silicones and/or PVP as the conditioning agents in the liposomal compositions of WO 95 would have been obvious to one of ordinary skill in the art since these are art well-known hair conditioning agents as evident from Dodd or Schueller. Alternately, to encapsulate the hair conditioning agents of Dodd or Schueller in the liposomes of WO 95 would have been obvious to one of ordinary skill in the art because of the higher deposition of the active agent taught by WO.

6. Claims 14-23 and 34-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathur (5,643,600) in combination with either Dodd (5,674,478) or Schueller (5,306,434).

Mathur discloses hair-conditioning compositions containing lipid vesicles. The lipid vesicles are made of glyceryl mono and diesters and further contain cholesterol and sodium lauryl sulfate (abstract, col. 3, lines 8-32, Examples 1, 2 and 5). What is lacking in Mathur is the teaching of silicones and PVP as the conditioning agents.

As pointed out above, Dodd (5,674,478) while disclosing hair care compositions teaches that silicones and PVP are hair conditioners (abstract, col. 7, line 8 through col. 10, line 23).

Similarly, Schueller teaches silicones and PVP as hair conditioners (abstract and columns 2-4).

The use of silicones and/or PVP as the conditioning agents in the liposomal compositions of Mathur would have been obvious to one of ordinary skill in the art since these are art well-known hair conditioning agents as evident from Dodd or Schueller. Alternately, to encapsulate the hair conditioning agents of Dodd or Schueller in the

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liposomes of Mathur would have been obvious to one of ordinary skill in the art because of the exceptional properties of vesicles in moisturizing properties and delivery of active agents as taught by Mathur.

7. Claims 20-22 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/23578 in combination with either Dodd (5,674,478) or Schueller (5,306,434) as set forth above, further in view of Mathur.

The teachings of WO 95, Dodd and Schueller have been discussed above. What is lacking in WO's liposomes is the presence of dual chain lipid.

As pointed out above, Mathur teaches lipid vesicles made from glyceryl diesters as hair conditioners. The inclusion of the dual chain lipid in the liposomes of WO 95 would have been obvious to one of ordinary skill in the art with a reasonable expectation of success since the reference of Mathur shows that these dual chain lipids have also the ability to form lipid vesicles.

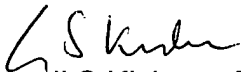
Wallach (4,942,038) is cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S Kishore, Ph.D whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gollamudi S Kishore, Ph.D  
Primary Examiner  
Art Unit 1615

GSK